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FISCAL IMPACT STATEMENT

LS 6114

BILL NUMBER: HB 1058

NOTE PREPARED: Nov 9, 2007

BILL AMENDED:

SUBJECT: Sex Offender Procedures.

FIRST AUTHOR: Rep. Foley

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: This bill has the following provisions:

- A. It specifies the court in which a petition to remove the designation as a sexually violent predator or an offender against children must be filed.
- B. It provides that the petitioner has the burden of proving that the designation should be removed.

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

Effective Date: July 1, 2008.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: *Court Specification for Reclassifying a Person From A Sexually Violent Predator to a Sex Offender* – Depending on where a person was sentenced and where the person lives, some petitions for reclassifying a person from a sexually violent predator to a sex offender could be shifted from a court in one county to a court in another county. The person filing this petition would pay a civil filing fee. This would remove any confusion about the court in which a person would file a case for reclassification.

Burden of Proof for Reclassifying – Current law is silent about the degree of evidence that is needed to determine whether a person should be reclassified from a sexually violent predator to a sex offender. Consequently, courts could base this decision on a preponderance of evidence. Two higher levels of evidence

are used in some instances: “clear and convincing” and “beyond a reasonable doubt”. Increasing the burden of proof from a preponderance of evidence to clear and convincing evidence could increase the amount of evidence that the court would need to determine whether the petitioner is no longer a sexually violent offender. It could also reduce the number of sexually violent predators who might be reclassified as sex offenders.

Background Information – Any person who commits a sex crime (see table below) is considered a sex offender, except if a person is convicted of sexual misconduct with a minor and the age difference between the person and the victim is not more than four years and the victim and the person have an ongoing relationship. Generally, the person will be between 18 and 19 since the victim will be between 13 and 15.

The table below shows all sex offenses for which a person would automatically be considered a sex offender. There are two subgroups within the larger sex offender population: sexually violent predators and offenders against children.

Sexually violent predators are by law defined as a sex offender who “suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense” (IC 35-38-1-7.5). Persons are automatically classified as sexually violent predators if they are convicted of rape, criminal deviate conduct, child molesting as a Class A or B felony, or vicarious sexual gratification as a Class A, B, or C felony. They can also be classified as a sexually violent predator by a court hearing.

Offenders against children are by default any sexually violent predator or any sex offender convicted of a crime of child molesting, exploitation, solicitation, or seduction.

Sex Crime	Code Cite	Offense Depending on Criminal History			
		Sexually Violent Predator	Offender Against Children	Sex Offender ⁴	
Rape	IC 35-42-4-1	First Offense	First Offense	First Offense	
Criminal Deviate Conduct	IC 35-42-4-2				
Child Molesting a or B Felony	IC 35-42-4-3				
Child Molesting Class C Felony	IC 35-42-4-3	If Prior Sex Crime Or By Court Hearing			
Child Exploitation	IC 35-42-4-4(b)				
Vicarious Sexual Gratification Class a B or C Felony	IC 35-42-4-5	First Offense	If Offender is a Sexually Violent Predator		
Vicarious Sexual Gratification Class D Felony	IC 35-42-4-5	If Prior Sex Crime Or By Court Hearing	First Offense		
Child Solicitation	IC 35-42-4-6		If Offender is a Sexually Violent Predator		
Child Seduction	IC 35-42-4-7		First Offense		
Sexual Misconduct with a Minor ³	IC 35-42-4-9		If Offender is a Sexually Violent Predator		
Incest	IC 35-46-1-3		First Offense		
Sexual Battery ¹	IC 35-42-4-8		If Offender is a Sexually Violent Predator		
Kidnaping ¹	IC 35-42-3-2		First Offense		
Criminal Confinement	IC 35-42-3-3		If Offender is a Sexually Violent Predator		
Possession of Child Pornography	IC 35-42-4-4(c)		First Offense		
Promoting Prostitution	IC 35-45-4-4		If Offender is a Sexually Violent Predator		
Promotion of Human Trafficking	IC 35-42-3.5-1(a)(2)		First Offense		
Sexual Trafficking of a Minor	IC 35-42-3.5-1(b)		If Offender is a Sexually Violent Predator		
Human Trafficking ²	IC 35-42-3.5-1(c)(3)	First Offense			
Notes:					
¹ If the victim is younger than 18 and the person confining or removing the victim is not victim's parent or guardian.					
² If the victim is less than 18 years of age.					
³ However, a person is not sex offender if consensual act and the age difference is less than 4 years.					
⁴ A court can declare any person a sexually violent predator who has been convicted of a sex crime that does not automatically make a person a sexually violent predator through a court procedure described in IC 35-38-1-7.5.					

Management and Monitoring of Sex Offenders and Sexually Violent Predators – Once a person is declared to be a sex offender, offender of children, or a sexually violent predator, they are required to be monitored, managed, and restricted in where they can live and work. The following shows the primary requirements.

Primary Management and Monitoring Requirements			
	Sexually Violent Predator	Offender Against Children	Sex Offender
Report to local law enforcement agency for registration & photograph	Every 90 Days	See Note	Annually
Required personal visit from local law enforcement agency	Every 90 Days	See Note	Annually
Court waiver allowed to live within 1,000 ft. of schools, youth program centers, & public parks	No	No	Yes
Violating restrictions to work or volunteer on school property at youth program center or public park	Class D Felony for First Time Offense, Class C Felony for Second Time Offense		Probation or Parole Violation
Registration Period	Lifetime Unless No Prior Sex Offense and Court Determines No Longer SVP	Lifetime Unless No Prior Sex Offense and Court Determines No Longer OAC	Lifetime If: (A) Offender > 18 & Victim < 12 or (B) If Serious Bodily Injury or Death or Used Force or the Threat of Force or (C) If Rendered Victim Unconscious Else 10 Years after Release from DOC
Global position monitoring required	Yes	See Note	No
Note: Nothing specified for Offenders Against Children. Requirements and restrictions will depend on whether the Offender Against Children is a Sexually Violent Predator or a Sex Offender.			

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts with criminal jurisdiction and probation departments.

Information Sources: Proceedings of Sentencing Policy Study Committee; Indiana Code.

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